

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

In re:	§	Chapter 11
	§	
TAJAY RESTAURANTS, INC., <i>et al.</i>	§	Case No. 19-70067-TMD
Debtors. ¹	§	(Jointly Administered)
	§	

**DEBTORS' RESPONSE TO MOTION OF REAL ESTATE ACQUISITIONS KJE, LLC
FOR AN ORDER PURSUANT TO 11 U.S.C. §105, 365 AND 503 (I) ALLOWING
ADMINISTRATIVE EXPENSE, (II) DIRECTING PAYMENT OF POST-PETITION
RENT OR REJECTION OF LEASE, AND (III) GRANTING RELATED RELIEF**

TO THE HONORABLE TONY M. DAVIS, U.S. BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”) hereby file this Response to Motion of Real Estate Acquisitions KJE, LLC for an Order Pursuant to 11 U.S.C. §105, 365 and 503 (I) Allowing Administrative Expense, (II) Directing Payment of Post-Petition Rent or Rejection of Lease and (III) Granting Related Relief (the “*Motion*”) and shows the Court as follows:

1. Paragraphs 1 - 3 concern the Movant’s statement of position. As set forth below, Debtors deny that the Movant is entitled to the relief requested. To the extent they constitute factual assertions, the assertions are denied.
2. Debtors admit the statements contained in paragraphs 4 - 6.
3. Debtors admit the statements contained in paragraph 7.
4. With respect to paragraph 8, the Debtors are unable to admit or deny the allegations contained in that paragraph.

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Yummy Seafoods, LLC (5494); Yummy Holdings, LLC (5580); and Tajay Restaurants, Inc. (3602). The mailing address for the Debtors, solely for purposes of notices and communications, is 3304 Essex Drive, Richardson, Texas 75082.

5. Debtors deny the allegations contained in paragraph 9.

6. Debtors deny the allegations contained in paragraph 10.

7. With respect to paragraph 11, Debtors admit that a check was mailed and the payment was made in mistake.

8. With respect to paragraph 12, Debtors admit that the equipment and signage has been removed, but otherwise deny the allegations in that paragraph.

9. Paragraph 13 constitutes legal argument. Debtors admit that the lease was listed on the schedules, but in fact, the lease was terminated pre-petition.

10. By letter dated May 3, 2019, Movant “terminated” the lease. Attached as Exhibit A is a true and correct copy of the correspondence sent by the Movant terminating the lease. Though Movant now seems to take the position that the lease was not terminated and is entitled to post-petition rent, the case law is clear that a landlord is not entitled to recover post-petition rent or an administrative expense for a lease that was terminated pre-petition. *See In re DBSI, Inc.*, 407 B.R. 159 (Bankr. D. Del. 2009); *see also In re Art & Architecture Books of the 21st Century* (2016WL1199116*2) (Bankr. C.D. Cal. March 21, 2016).

11. Moreover, contrary to Movant’s assertions, the premises did not provide any benefit to the Estate on a post-petition basis, and Yummy Holdings was not in a “hold over”) position post-petition. For the reasons set forth above, Movant’s motion should be denied.

WHEREFORE, based on the foregoing, the Debtors request the Court deny the Motion and grant them such other and further relief to which they may be entitled.

DATED: September 6, 2019.
Austin, Texas

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: /s/ Mark C. Taylor

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*Attorneys for the Debtors and
Debtors in Possession*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel listed below and on all persons on the attached service list either electronically via the Court's ECF service or by United States First Class Mail on September 6, 2019.

R.J. Shannon
Barron & Newburger, P.C.
7320 N. MoPac Expy., Suite 400
Austin, Texas 78731

/s/ Mark C. Taylor
Mark C. Taylor

MASTER SERVICE LIST

Debtors

Tajay Restaurants, Inc., et al.
3304 Essex Drive
Richardson, TX 75082

Counsel to Debtors

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LLP
Attn: Eric J. Taube/Mark C. Taylor
100 Congress Ave., 18th Floor
Austin, TX 78701

Consolidated 20 Largest Unsecured Creditors

DTMJ-1, LLC
Attn: David & Tara Montgomery
5134 Wright Terrace
Stokie, IL 60077

Janda Land Holdings, LLC
c/o Charles Greenough
McAfee & Taft
Two W. Second Street, Suite 1100
Tulsa, OK 74103

Long John Silver's Inc YRSG
PO Box 950111
Louisville, KY 40295

Comptroller of Public Accounts
P O Box 149348
Austin, TX 78714-9348

Dennis Semler Tulsa City Trs
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Tulsa, OK 74103-3840

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Pasadena, CA 91107

Oklahoma Tax Commission
P O Box 26920
Oklahoma City, OK 73126-0930

Lane Dworkin Properties, LLC
415 Park Avenue
Rochester, NY 14607

Economy Square Inc
210 Park Ave, Suite 2175
Oklahoma City, OK 73102

NADG NNN LJS-AW OK LP
3131 McKinney Avenue
Suite L-10
Dallas, TX 75204

JLou Properties LLC
1613 N. Broadway Ave
Oklahoma City, OK 73103

J & C Property Co.
13505 Montfort Place Suite# 200
Dallas, TX 75240

McLane Food Service Inc
2085 Midway Rd
Carrollton, TX 75006-5063

Real Estate Acquisitions
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5822 Charlotte Dr. Unit 3403
San Jose, CA 95123

Janda Land Holdings, LLC
Attn: David L. Egelston
101 E. Moon Valley Dr.
Phoenix, AZ 84022

STE Ventures, LLC
Attn: Steven T. Tsang
20028 SE 3rd Circle
Camas, WA 98607

August, August and Lane of
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72 Canfield Rd.
Pittsford, NY 14534

Burris Valley Ranch, Inc.
c/o Joe C. Lewallen, Jr.
McAfee & Taft
211 North Robinson, 10th Floor
Oklahoma City, OK 73102-7103

Burris Valley Ranch, Inc
7300 N. Comanche
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5134 Wright Terrace
Skokie, IL 60077

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Attn: David Egelston
101 E. Moon Valley Drive
Phoenix, AZ 85022

Mittal & Sons, LLC
Attn: Naveen Mittal
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San Antonio, TX 78229

J&C Property Co.
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Oklahoma City, OK 73102

EXHIBIT A



Notice of Service of Process

null / ALL
Transmittal Number: 19770733
Date Processed: 05/08/2019

Primary Contact: Omar Misleh
Ampex Brands
3304 Essex Dr
Richardson, TX 75082-9708

Electronic copy provided to: Tabbassum Mumtaz

Entity: Yummy Holdings, LLC
Entity ID Number 3187566

Entity Served: Yummy Holdings, LLC

Title of Action: Real Estate Acquisitions Kje, LLC. vs. Long John Silver's Store #5232

Document(s) Type: Notice

Nature of Action: Property

Case/Reference No: Not Shown

Jurisdiction Served: Kansas

Date Served on CSC: 05/06/2019

Answer or Appearance Due: Other/NA

Originally Served On: CSC

How Served: Regular Mail

Sender Information: Jeffreya. Chubb
620-331-1800

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To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

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May 3, 2019

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c/o Omar Misleh
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Richardson, TX 75082

Yummy Holdings, LLC
c/o Ajay Dhillon
1024 Serpentine Ln, #101
Pleasanton, CA 94566

Corporation Service Company
Resident Agent for
Yummy Holdings, LLC
2900 SW Wanamaker Dr., Ste 204
Topeka, KS 66614

Yummy Holdings, LLC
c/o Omar Misleh
7676 Hillmont, Ste. 199
Houston, TX 77040

Yummy Holdings, LLC
17774 Preston Rd
Dallas, TX 75262

**Re: Long John Silver's Store #5232
314 West 11th Street
Coffeyville, Kansas
Franchisee: Yummy Holdings, LLC
Notice of Termination of Lease**

Dear Ladies and/or Gentleman:

I represent Real Estate Acquisitions KJE, LLC. This is a follow-up letter to my previous letter dated April 18, 2019, copy enclosed. At this time, Notice is hereby given that the Lease Agreement is hereby terminated and the Landlord will exercise all of its rights under the Lease Agreement. Please note that even though the Lease is being terminated, the Tenant has a continuing responsibility to make

Page Two
May 3, 2019

lease payments as set forth in paragraph 11(b). Please govern yourselves accordingly.

I am required to advise you that this letter is an attempt to collect a debt.

Yours very truly,

EMERT CHUBB REYNOLDS, LLC



Jeffrey A. Chubb

JAC:js

Enclosure

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April 18, 2019

COPY

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1024 Serpentine Ln, #101
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Long John Silver's, Inc.
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Corporation Service Company
Resident Agent for
Yummy Holdings, LLC
2900 SW Wanamaker Dr., Ste 204
Topeka, KS 66614

Yummy Holdings, LLC
17774 Preston Rd
Dallas, TX 75262

**Re: Long John Silver's Store #5232
314 West 11th Street
Coffeyville, Kansas
Franchisee: Yummy Holdings, LLC
Delinquency in Rental Payment and Payment of Real Estate Taxes**

Dear Ladies and/or Gentleman:

I represent Real Estate Acquisitions KJE, LLC, which owns the underlying real estate for the Long John Silver's location at 314 West 11th Street, Coffeyville, Kansas, and is the Landlord under the Lease dated June 18, 2008, which shows Yummy Holdings, LLC, as the Tenant. Please excuse the multiple letters to different addresses but the original 2008 Lease document contains some required

Page Two
April 18, 2019

addresses for notification purposes, plus I have sent this letter to other addresses which I believe to be more current.

Please be advised that Yummy Holdings, LLC, has not paid rent for the months of January through April, 2019, inclusive, in the amount of \$5,148.58 per month. The total delinquency owed at this time is \$20,594.32.

In addition, paragraph 7 of the Lease requires Yummy Holdings, LLC, to keep the real estate taxes current. They are delinquent for the second half of the 2016 taxes, plus the second half of the 2018 taxes have not yet been paid. The total real estate tax delinquency as of April 17, 2019, is \$10,106.61.

Demand is hereby made that these delinquencies be brought current consistent with the terms of the Lease. Should you fail therein, my client will exercise its rights under the Lease and under the laws of the State of Kansas.

I am required to advise you that this letter is an attempt to collect a debt.

Yours very truly,

EMERT CHUBB REYNOLDS, LLC



Jeffrey A. Chubb

JAC:js

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